IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1700 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

GANGARAMBHAI SAMPATBHAI DHANKA - Respondent(s)

==========

Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
MR TR MISHRA for Respondent(s) : 1,
MR DS CHAUHAN for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/08/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner Corporation has challenged the legality and validity of the judgment and award passed by the Labour Court, Bharuch dated 1st September 2004 in Reference (LCB)

No. 140 of 1991 in partly allowing the said Reference directing the petitioner to reinstate the respondent workman to his original post with 25% backwages with continuity of service and further directed the petitioner to pay Rs. 3000 towards costs of the Reference.

2. It is the case on behalf of the petitioner that the respondent was serving as a badli worker and as and when work was available due to non-availability of regular workman he was offered work. He was unauthorisedly absent with effect from 5.6.1989 and he was directed to report for duty vide intimation dated 11.7.1989, still the respondent workman did not report for duty and therefore a departmental enquiry came to be initiated against him. There was no response from the respondent workman except at one point of time he wrote to the petitioner Corporation that as and when he resume duty he would produce necessary medical Certificate. It appears that thereafter the petitioner Corporation after holding departmental enquiry and having found the charges proved dismissed the respondent workman. The respondent workman preferred departmental first appeal which came to be dismissed on 12th September 1990 and thereafter the respondent raised the industrial dispute which came to be referred to the Labour Court, Bharuch for its adjudication being Reference (LCB) No. 140 of 1991. Before the Labour Court, the respondent workman for the first time

produced Medical Certificate and though the Labour Court came to the conclusion that charge of unauthorised absenteeism is proved against the workman it has held that the punishment of dismissal imposed by the disciplinary authority is too harsh and disproportionate and interfered with the order of punishment imposed by the disciplinary authority by directing the petitioner to reinstate the respondent workman with 25% backwages (denying 75% backwages) with continuity of service. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Bharuch, the petitioner preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri Asish Dagli, learned advocate has vehemently submitted that the respondent workman was serving as a badli worker and he remained unauthorisedly absent without informing the Corporation and though by intimation dated 11.7.1989 he was directed to report for duty he did not report for duty and even he did not submit any medical certificate and for the first time before the Labour Court the workman submitted Medical Certificate which was not required to be considered by the Labour Court. It is further submitted that in view of the fact that the respondent workman was serving as a badli worker there was no question of giving him continuity of service as even otherwise on reinstatement he is required to be reinstated to his

original post as badli worker. It is further submitted that when it is specifically held and proved that the respondent workman has committed misconduct there is no question of even payment of any backwages to the respondent workman more particularly when he was serving as a badli worker. It is therefore requested to allow the present Special Civil Application.

4. Shri TR Mishra, learned advocate appearing on behalf of the respondent workman has fairly submitted that the respondent workman would be satisfied if the respondent workman is reinstated as 'badli worker' afresh denying the backwages and even without continuity. Considering the fact that the respondent workman did even submit the Medical Certificate though belatedly and considering the facts and circumstances of the case, more particularly when the Labour Court on appreciation of evidence has held that the order of punishment of dismissal is too harsh, if the petitioner is directed to reinstate the respondent workman to his original post (as a badli worker) as a fresh appointee as the respondent workman had worked as a badli worker during the last 7 years, it will meet the ends of justice. Under the circumstances, the judgment and award passed by the Labour Court is required to be modified and the following order is passed.

5. For the reasons stated hereinabove, the judgment and award passed by the Labour Court, Bharuch dated 1st September 2004 in Reference (LCB) No. 140 of 1991 is modified to the extent that the petitioner shall reinstate the respondent workman to his original post (as 'Badli Worker') as a fresh appointee without any backwages and without any continuity in service. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.